

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

In the Matter of:	)	Docket No. R9-15-03
	)	
	)	Finding and Notice of Violation
Exide Technologies	)	
Vernon, California	)	
	)	
Proceeding Under Section 113(a),	)	
<u>Clean Air Act, As Amended</u>	)	

This Finding of Violation ("FOV") is issued to Exide Technologies ("Exide") for violations of the Clean Air Act ("CAA" or "Act") as amended, 42 U.S.C. §§ 7401-7671q, at its lead smelting operation located in Vernon, California (the "Facility"). The Facility is located within the jurisdiction of the South Coast Air Quality Management District ("SCAQMD" or "District"). The violations identified in this FOV are not violations of a state implementation plan and therefore, this FOV is not a required notification pursuant to Section 113(a)(1) of the Act. EPA, Region IX is providing notification of its findings pursuant to its inherent discretionary authority.

**GENERAL STATUTORY AND REGULATORY BACKGROUND**

1. Sections 112(d) and (f) of the Act require EPA to promulgate standards that regulate emissions of hazardous air pollutants from major stationary sources. 42 U.S.C. §7412(d) and (f).
2. A person's failure to comply with a requirement or prohibition of section 112 of the Act renders the person subject to enforcement under section 113 of the Act. 42 U.S.C. §7413(a)(3).
3. In accordance with sections 112(d) and (f) of the Act, EPA has promulgated "National Emissions Standards for Hazardous Air Pollutants from Secondary Lead Smelting". 62 Fed. Reg. 32209

(June 13, 1997); 77 Fed. Reg. 556 (Jan. 5, 2012); *see also*, 79 Fed. Reg. 367 (Jan. 3, 2014). These standards, also known as the Secondary Lead Smelting NESHAP, are codified at 40 C.F.R. part 63, subpart X.

4. The compliance date for the 1997 Secondary Lead Smelting NESHAP was December 23, 1997. 40 C.F.R. §63.546(a) (1997). The compliance date for the 2012 Secondary Lead Smelting NESHAP was January 6, 2014. 40 C.F.R. §63.546(c).

Secondary Lead Smelting NESHAP Requirements Related to  
Standards for Fugitive Dust Sources

5. Owners and operators of secondary lead smelting operations are required to comply with standards for fugitive dust sources, including the following:
  - a) A requirement to prepare, and at all times operate according to, a standard operating procedures (“SOP”) manual that describes in detail the measures that will be put in place and implemented to control fugitive dust emissions from plant roadways and buildings, accidental releases, battery storage areas, equipment maintenance, material storage areas and material handling areas. 40 C.F.R. §63.545(a). In addition, the SOP manual must include the requirements specified in 40 C.F.R. §63.545(c)(1) through (7).
  - b) A requirement to submit the SOP manual to EPA or delegated authority for review and approval when initially developed and any time changes are made. 40 C.F.R. §63.545(b).

Secondary Lead Smelting NESHAP Requirements  
Related to Baghouse Monitoring

6. Owners and operators of secondary lead smelting operations are required to comply with requirements for monitoring baghouses, including the following:
  - a) A requirement to prepare, and at all times operate according to, a standard operating procedures (“SOP”) manual that describes in detail procedures for inspection, maintenance, and bag leak detection and corrective action plans for all baghouses that are used to control process vents,

process fugitive, or fugitive dust emissions from any source subject to the lead emission standards in sections 63.543, 63.544, 63.545, including those used to control emissions from building ventilation. 40 C.F.R. §63.548(a). In addition, the SOP manual must include the procedures specified in 40 C.F.R. §63.548(c)(1) through (9) and 40 C.F.R. §63.548(d).

- b) A requirement to submit the SOP manual to EPA or the delegated authority for review and approval. 40 C.F.R. §63.548(b).
- c) A requirement to continuously operate a bag leak detection system that meets the specifications of 40 C.F.R. §63.548(e)(1) through (8). 40 C.F.R. §63.548 (e); see also, 40 C.F.R. §63.548(c)(9).
- d) A requirement to maintain for five years: (1) electronic records of the bag leak detection system output; (2) an identification of the date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the corrective actions taken, and the date and time the cause of the alarm was corrected; (3) all records of inspections and maintenance activities required under 63.548(c) as part of the practices described in the SOP manual for baghouses required under 63.548(a). 40 C.F.R. §63.550(c)(1)-(3).

#### Secondary Lead Smelting NESHAP Requirements Related to Total Hydrocarbons

- 7. Owners and operators of secondary lead smelting operations are required to comply with emission limits for total hydrocarbons, including the following:
  - a) 20 ppmv @ 4% CO<sub>2</sub> for collocated blast and reverberatory furnaces. 40 C.F.R. §63.543(c), and Subpart X, Table 2;
  - b) 360 ppmv @ 4% CO<sub>2</sub> for blast furnaces constructed prior to 1994 that are not collocated with reverberatory furnaces. 40 C.F.R. §63.543(c) and Subpart X, Table 2;
  - c) The limit calculated by the formula for emissions from combined furnaces that do not meet definition of collocated furnaces. 40 C.F.R. §63.543(d).

8. Owners and operators of secondary lead smelting operations are required to comply with temperature monitoring requirements, including the following:
  - a) Install, calibrate, maintain, and continuously operate a device to monitor and record the temperature of the afterburner or furnace exhaust streams consistent with the requirements for continuous monitoring systems in section 63.8. 40 C.F.R. §63.548(j)(1).
  - b) Conduct a performance evaluation for the temperature monitoring device according to section 63.8(e). 40 C.F.R. §63.548(j)(2).
  - c) Monitor and record the temperature of the afterburner or the furnace exhaust streams every 15 minutes during the initial performance or compliance test for THCs and D/Fs and determine the arithmetic average for the recorded temperature measurements. 40 C.F.R. §63.548(j)(3).
  - d) Maintain an afterburner or exhaust temperature such that the average temperature in any 3-hour period does not fall more than 28 degrees Celsius (50 degrees Fahrenheit) below the average established in section 63.548(j)(3) of this section. 40 C.F.R. §63.548(j)(4).
9. Owners and operators of secondary lead smelting operations are required to comply with temperature monitoring-related recordkeeping and reporting requirements, including the following:
  - a) Records of the output from the continuous temperature monitor required in section 63.548(j)(1), and an identification of periods when the 3-hour average temperature fell below the minimum established under section 63.548(j)(4), and an explanation of the corrective actions taken. 40 C.F.R. §63.550(c)(5).

#### **FINDINGS OF FACT**

10. Exide Technologies is the owner and/or operator of the Facility, located at 2700 South Indiana Street in Vernon, California. The Facility is a secondary lead smelter that recycles lead batteries and other lead-bearing scrap materials.
11. Exide suspended smelting operations at the Facility on or about March 14, 2014. On July 10, 2014,

SCAQMD's Hearing Board approved an abatement order requiring Exide to upgrade the Facility's air pollution control system and prohibiting operation of its furnaces until completion of construction. On December 5, 2014, SCAQMD issued a permit authorizing construction and installation of air pollution control equipment. Pursuant to the SCAQMD abatement order, Exide must complete construction and installation of the air pollution control equipment within 180 days of issuance of the permit, which is June 2, 2015.

12. On or about June 20, 2014, EPA sent a letter pursuant to its authority under section 114 of the Clean Air Act requesting information related to determining compliance with the Secondary Lead Smelting NESHAP at the Facility.
13. Exide responded to EPA's information request letter by letters dated July 25, 2014 and August 29, 2014.
14. EPA's information request letter requested that Exide provide the following information regarding SOP manuals:

Q#14: [Provide] [a]ll standard operating procedures manuals for sources of fugitive dust and for baghouses and all notifications and updates submitted to the EPA or the District pursuant to 40 C.F.R. §§ 63.545(a), 63.548(a), 63.549(b), and 63.550(b). Please state the date that each manual and notification was submitted to EPA or the District, and provide documentation of the date of the submittal.

15. Exide's response included an SOP manual for baghouses dated July 1997 and an SOP manual for fugitive dust sources dated July 2008. The SOP manual for baghouses did not include current information regarding equipment. The SOP manual for fugitive dust sources did not include information regarding accidental releases.
16. EPA's information request letter requested that Exide provide the following information regarding baghouse monitoring:

Q#15: From January 1, 2010, to the present, all bag leak detection system records required by 40 C.F.R. § 63.550(c)(1)-(3).

17. Exide's response stated that it was providing its responsive records. Exide's response did not include

any electronic records.

18. EPA's information request letter requested that Exide provide the following information regarding total hydrocarbons:

Q.#17: For each continuous temperature monitoring device from January 1, 2010, installed or operated to comply with the requirements of 40 C.F.R. § 63.548(j)(1), identify and state the location of each such device and provide the results of the initial performance or compliance test conducted pursuant to 40 C.F.R. § 63.548(j)(2).

Q.#18: From January 1, 2010, to the present, all continuous temperature monitor output electronic records required by 40 C.F.R. § 63.550(c)(5), including an identification of each period when the 3-hour average temperature fell below the minimum established under § 63.548(j)(4) and an explanation of the corrective actions taken.

19. Exide's response stated that the Facility uses two devices to monitor temperature of the afterburner, one device during warm up of the afterburner and startup of the blast furnace, and a different device located in the afterburner shaft to control operation of the afterburner during steady state conditions. Exide's response did not include complete records from January 1, 2010 of output from either monitor.

### **FINDINGS OF VIOLATION**

#### **Findings of Failure to Comply with Secondary Lead Smelting NESHAP Requirements**

20. Exide failed to prepare and operate according to a detailed SOP manual for fugitive dust sources, in violation of 40 C.F.R. §63.545(a).
21. Exide failed to prepare and operate according to a detailed SOP manual for baghouses used to control process vents, process fugitives, and fugitive dust emissions, in violation of 40 C.F.R. §63.548(a).
22. Exide failed to maintain electronic records of bag leak detection system output, in violation of 40 C.F.R. §63.550(c)(1).
23. Exide failed to maintain complete records of afterburner temperatures, in violation of 40 C.F.R. §63.550(c)(5).

### **NOTICE OF VIOLATION**

Notice is given to Exide Technologies that the Administrator of the United States Environmental

Protection Agency, by authority duly delegated to the undersigned, finds that Exide Technologies has violated section 112 of the Act, and the Secondary Lead Smelting NESHAP, as set forth in the Findings of Violation.

### **ENFORCEMENT**

Section 113(a)(3) of the Act provides that when any person has violated any requirement or prohibition of section 112 of the Act, EPA may:

- issue an order requiring compliance with the requirements or prohibition of such requirements, or
- issue an administrative penalty order pursuant to section 113(d) for civil administrative penalties of up to \$37,500 per day of violation, or
- bring a civil action pursuant to section 113(b) for injunctive relief and/or civil penalties of not more than \$37,500 per day for each violation.

Furthermore, if a person knowingly violates any requirements of section 112 more than 30 days after notification of violation, section 113(c) provides for criminal penalties or imprisonment, or both.

Under section 306(a) of the Act, the regulations promulgated thereunder (2 C.F.R. Parts 180 and 1532), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. Violations of the Act may result in the facility being declared ineligible for participation in any federal contract, grant, or loan.

### **PENALTY ASSESSMENT CRITERIA**

Section 113(e)(1) of the Act states that the Administrator or the court, as appropriate, shall, in determining the amount of any penalty to be assessed, take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment

by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

Section 113(e)(2) of the Act allows the Administrator or the court to assess a penalty for each day of violation. For the purposes of determining the number of days of violation, where the EPA makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of this FOV, the days of violation shall be presumed to include the date of this FOV and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

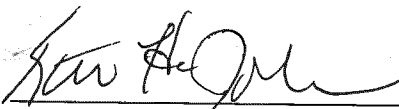
#### **OPPORTUNITY FOR CONFERENCE**

Exide Technologies may, upon request, confer with EPA. The conference will enable Exide to present evidence bearing on the finding of violation, the nature of the violations, and any efforts it may have taken or proposes to take to achieve compliance. Exide Technologies has the right to be represented by counsel. A request for a conference with EPA must be made within ten (10) working days of receipt of this FOV. The request for a conference or other inquiries concerning the FOV should be made in writing to:

Kara Christenson  
Office of Regional Counsel (ORC-2)  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, California 94105  
(415) 972-3881  
christenson.kara@epa.gov

Date

3/5/15



Kathleen H. Johnson  
Director, Enforcement Division





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

**MAR 05 2015**

CERTIFIED MAIL # 7010 1670 0000 7048 0326  
RETURN RECEIPT REQUESTED

IN REPLY: ENF-2-1  
REFER TO: Docket No. R9-2015-03

Mr. Robert M. Caruso  
Chief Executive Officer  
Exide Technologies, Inc.  
Building 200  
13000 Deerfield Parkway  
Milton, Georgia 30004

Re: Exide Technologies Finding and Notice of Violation

Dear Mr. Caruso:

Enclosed is a copy of a Finding of Violation ("FOV") issued pursuant to section 113(a)(3) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (the "Act"), notifying you that the United States Environmental Protection Agency ("EPA"), Region IX, finds that Exide Technologies, Inc. ("Exide"), has violated certain provisions of the Act's National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting at its lead battery recycling facility located in Vernon, California (the "Facility").

You should be aware that section 113(a)(3) of the Act authorizes EPA to issue an order requiring compliance with the requirements of the Act, issue an administrative penalty order, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, section 113(c) of the Act provides for criminal penalties in certain cases.

In addition, section 306 of the Act, 42 U.S.C. § 7606, the regulations promulgated thereunder (2 C.F.R. Part 180), and Executive Order 11738 provide that facilities to be utilized in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. A violation of the Act may result in the Exide Facility being declared ineligible for participation in any federal contract, grant, or loan.

If you wish to discuss the enclosed FOV, you may request a conference with EPA within ten (10) working days of receipt of this FOV. The conference will afford Exide an opportunity to present information bearing on the finding of violation, the nature of the violations, and any efforts it may have taken or proposes to take to achieve compliance.

If you have any questions pertaining to this FOV, please contact Mark Sims of the Air & TRI Enforcement Office at (415) 972-3965, or have your attorney contact Kara Christenson, Office of Regional Counsel, at (415) 972-3881. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathleen H. Johnson', with a long horizontal flourish extending to the right.

Kathleen H. Johnson  
Director, Enforcement Division

Enclosure

cc: Mr. Barry Wallerstein (SCAQMD)  
Mr. Jim Ryden (CARB)  
Mr. John Hogarth (Exide)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

MAR 05 2015

IN REPLY: ENF-2-1  
REFER TO: Docket No. R9-2015-03

Mr. Barry Wallerstein  
Executive Officer  
South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, California 91765

Dear Mr. Wallerstein:

Enclosed for your information is a copy of a Finding of Violation ("FOV") that the United States Environmental Protection Agency ("EPA"), Region IX, issued to Exide Technologies, Inc. ("Exide"), for violations of the Clean Air Act ("Act") at its lead battery recycling facility located in Vernon, California.

The purpose of the FOV is to notify Exide that EPA finds that it has violated certain provisions of the Act's National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting. The violations are set forth more specifically in the enclosed FOV. The FOV has been issued pursuant to section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3).

If you have any questions concerning this FOV, please contact Mark Sims, Air & TRI Enforcement Office, at (415) 972-3965, or [sims.mark@epa.gov](mailto:sims.mark@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen H. Johnson".

Kathleen H. Johnson  
Director, Enforcement Division

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

MAR 05 2015

IN REPLY: ENF-2-1

REFER TO: Docket No. R9-2015-03

Mr. Jim Ryden  
Chief, Enforcement Division  
California Air Resources Board  
P.O. Box 2815  
Sacramento, California 95812

Dear Mr. Ryden:

Enclosed for your information is a copy of a Finding of Violation ("FOV") that the United States Environmental Protection Agency ("EPA"), Region IX, issued to Exide Technologies, Inc. ("Exide"), for violations of the Clean Air Act ("Act") at its lead battery recycling facility located in Vernon, California.

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If you have any questions concerning this FOV, please contact Mark Sims, Air & TRI Enforcement Office, at (415) 972-3965, or [sims.mark@epa.gov](mailto:sims.mark@epa.gov).

Sincerely,

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Kathleen H. Johnson  
Director, Enforcement Division

Enclosure